

AMENDED IN ASSEMBLY AUGUST 23, 2002

AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 1078**

**Introduced by Senator Sher**

*(Principal coauthors: Assembly Members Simitian and Wright)*

**(Coauthor: Senator Bowen)**

*(Coauthors: Assembly Members Jackson, Koretz, Lowenthal, Pavley,  
and Wayne)*

February 23, 2001

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~~An act to amend Sections 383.5 and 390 of, to add Sections 333, 387,~~  
~~and 399.25 to, and to add Article~~ *An act to add Sections 387, 390.1, and*  
*399.25 to, and to add Article 16* (commencing with Section 399.11 to  
Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating  
to renewable energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Sher. Renewable energy: California  
Renewables Portfolio Standard Program.

(1) Under the Public Utilities Act, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to establish just and reasonable rates and charges. The act requires retail suppliers of electric services to disclose sources of electrical generation and requires that those retail suppliers report information to the State Energy Resources Conservation and Development Commission (Energy Commission).

This bill would establish the California Renewables Portfolio Standard Program. The program would require that a retail seller of electricity, including electrical corporations, community choice aggregators, ~~local publicly owned electric utilities~~ and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The bill would require the PUC to implement the renewables portfolio standard for electrical corporations, *if funds are made available as described*. Each electrical corporation would be required to increase its total procurement of eligible renewable energy resources by at least 1% per year so that ~~at least~~ 20% of its retail sales are procured from eligible renewable energy resources ~~by December 31, 2015~~. If an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet an annual target, the electrical corporation would be required to procure additional eligible renewable resources in subsequent years to compensate for the shortfall, *if funds are made available as described*. An electrical corporation with at least 20% of retail sales procured from eligible renewable energy resources in any year would not be required to increase its procurement in the following year.

This bill would require the PUC to direct electrical corporations to prepare within 90 days of being deemed creditworthy, and to ~~annually~~ *review and update as necessary*, renewable energy procurement plans that are sufficient to satisfy ~~at least 5 years of its obligations under the California Renewables Portfolio Standard Program, with the goal of procuring the least cost and best fit eligible renewable energy resources~~. The PUC would be required to adopt rules, *within 6 months of the effective date of these provisions*, for electrical corporations establishing a process for determining market prices of electricity from renewable generators pursuant to specified criteria, a process for rank ordering and selection of least-cost and best-fit renewable resources to fulfill program obligations, flexible rules for compliance that permit electrical corporations to apply *excess procurement in one year to subsequent years*, or inadequate procurement in one year to the following 3 years, and standard terms and conditions to be used by electrical corporations in contracting with renewable electricity generators. The PUC would be required to review and accept, modify, or reject each electrical corporation's renewable procurement plan 90



days prior to the commencement of renewable procurement by the electrical corporation. The PUC would be required to review and accept, modify, or reject renewable solicitations by electrical corporations and proposed contracts by electrical corporations with renewable electricity generators. The PUC would be required to allow an electrical corporation to recover, in rates, electricity procurement and administrative costs *associated with long-term contracts* reasonably incurred consistent with a renewable energy procurement plan approved by the PUC.

Because a violation of the Public Utilities Act or an order of the PUC is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would require the Energy Commission to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, *and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.*, ~~pursuant to provisions discussed below, to eligible renewable energy resources in order to reduce the cost of compliance with the portfolio standard by retail sellers, to consult with the PUC prior to establishing rules for compliance by retail sellers other than electrical corporations, to consult with the PUC prior to establishing rules for the awarding of supplemental energy payments, and to assess and collect penalties sufficient to ensure compliance, on any retail seller that is not an electrical corporation, that fails to meet its renewables portfolio standard. If supplemental energy payments are insufficient to cover above-market renewable procurement costs, the Energy Commission would be required to allow retail sellers other than electrical corporations to limit their annual procurement obligations to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. The bill would require that the Energy Commission enforce and monitor compliance with the renewable portfolio standards by retail sellers other than electrical corporations and local publicly owned electric utilities.~~

(2) ~~Under the Public Utilities Act, the PUC requires electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law~~

~~requires specified electrical corporations to collect specific amounts to support each of these programs. Existing law also requires the Energy Commission to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1, 2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method.~~

~~Existing law requires 45% of the money collected for the program be used for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.~~

~~This bill would restate the goal of the program to be, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California by 2006. This bill would instead require 20% of the funds~~



~~collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the competitiveness of specified eligible existing in-state renewable electricity generation facilities. The bill would instead require 50.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program, pursuant to specified criteria and procedures. The bill would instead require 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications and would authorize the Energy Commission, in awarding funding, to provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used to provide customer credits to customers that entered into direct transactions on or before September 20, 2001, for purchases of electricity produced by in-state renewable electricity generation facilities. The bill would require the Energy Commission to report to the Governor and Legislature by March 31, 2003, on how to most effectively utilize the funds for customer credits. The bill would require 1% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used~~



~~to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies. The bill would authorize the Energy Commission to expend up to 1% of the funds collected for any of its costs in implementing and administering the California Renewables Portfolio Standard Program.~~

~~(3)~~

(2) Existing law, the Warren-Alquist State Energy Resources Conservation and Development Act, requires the Energy Commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under existing law, the PUC must grant a certificate of public convenience and necessity, upon application by a public utility, for the construction of a new transmission facility or electric transmission line within the state. As a basis for granting a certificate of public convenience and necessity, the PUC is required to give consideration to community values, recreational and park areas, historical and aesthetic values, and influence on the environment. No certificate of public convenience and necessity may be granted for an electrical transmission line without certification by the Energy Commission, and the decision by the Energy Commission is conclusive as to all matters determined thereby and take the place of consideration by the PUC.

This bill would provide that an application of an electrical corporation for a certificate for the construction of new transmission facilities, that are necessary to facilitate achievement of the renewable power goals, shall be deemed to be necessary by the PUC in determining to issue a certificate of public necessity and convenience. The bill would require the PUC to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission ~~do not discriminate against a renewable generator~~ *are fully reflected in any retail rates established by the commission.*

~~(4)~~

(3) Existing law requires each local publicly owned utility to establish a nonbypassable usage based charge to fund investments in specified public purpose programs, including cost-effective demand-side management services to promote energy efficiency and energy conservation, investment in renewable energy resources and technologies, and services for low-income electricity consumers. The



charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require the governing board of a local publicly owned electric utility to be responsible for implementing and enforcing a renewables portfolio standard ~~consistent with the California Renewables Portfolio Standard Program~~, *as described*, and to annually report to ~~the Energy Commission~~ *its customers* upon expenditures of public goods funds on public purpose programs, thereby imposing a state-mandated local program. Because a violation of this provision would be a crime, this bill would also impose a state-mandated local program by creating a new crime.

~~(5)–~~

(4) Existing law provides that subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based on the commission’s “short run avoided cost energy methodology” are required to be determined by specified law.

This bill would authorize any nonutility power generator using renewable fuels that entered into a contract with an electrical corporation specifying fixed energy prices for output prior to December 31, 2001, to elect an additional 5 years of fixed energy payments at a level to be determined by the PUC.

~~(6)–~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 333 is added to the Public Utilities~~  
2     ~~Code, to read:~~

3     ~~333. (a) The commission shall direct each electrical~~  
4     ~~corporation to prepare renewable energy procurement plans as~~  
5     ~~described in paragraph (3) to satisfy at least five years of~~  
6     ~~obligations under the California Renewables Portfolio Standard~~  
7     ~~Program as established in Article 16 (commencing with Section~~  
8     ~~399.11). To the extent feasible, this procurement plan shall be~~  
9     ~~proposed, reviewed, and adopted by the commission as part of, and~~  
10    ~~pursuant to, a general procurement plan process. Consistent with~~  
11    ~~the goal of procuring the least-cost and best-fit eligible renewable~~  
12    ~~energy resources, each electrical corporation shall file an initial~~  
13    ~~renewable energy procurement plan with the commission prior to~~  
14    ~~resuming general procurement responsibilities. The commission~~  
15    ~~shall require each electrical corporation to update its renewable~~  
16    ~~energy procurement plan on an annual basis.~~

17    ~~(1) The commission shall not require an electrical corporation~~  
18    ~~to conduct procurement to fulfill the California Renewables~~  
19    ~~Portfolio Standard Program until it is deemed creditworthy by the~~  
20    ~~commission upon it having attained an investment grade rating as~~  
21    ~~determined by at least two major rating agencies. Within 90 days~~  
22    ~~of being deemed creditworthy, an electrical corporation shall~~  
23    ~~conduct solicitations to implement a renewable energy~~  
24    ~~procurement plan. An electrical corporation that is creditworthy as~~  
25    ~~of January 1, 2003, shall conduct solicitations to implement a~~  
26    ~~renewable energy procurement plan pursuant to this section and~~  
27    ~~the requirements of Article 16 (commencing with Section 399.11).~~

28    ~~(2) The commission shall adopt, by rule, for all electrical~~  
29    ~~corporations, all of the following:~~

30    ~~(A) A process for determining market prices pursuant to~~  
31    ~~subdivision (c) of section 399.15. The commission shall make~~  
32    ~~specific determinations of market prices after the closing date of~~  
33    ~~a competitive solicitation conducted by an electrical corporation~~  
34    ~~for eligible renewable energy resources. The electrical corporation~~  
35    ~~shall not transmit or share the results of any competitive~~  
36    ~~solicitation for eligible renewable energy resources until the~~  
37    ~~commission has established market prices pursuant to subdivision~~  
38    ~~(c) of Section 399.15.~~

1 ~~(B) A process that provides criteria for the rank ordering and~~  
2 ~~selection of least cost and best fit renewable resources to comply~~  
3 ~~with the annual California Renewables Portfolio Standard~~  
4 ~~Program obligations on a total cost basis. This process shall~~  
5 ~~consider estimates of indirect costs associated with needed~~  
6 ~~transmission investments and ongoing utility expenses resulting~~  
7 ~~from integrating and operating eligible renewable energy~~  
8 ~~resources.~~

9 ~~(C) Flexible rules for compliance including, but not limited to,~~  
10 ~~permitting electrical corporations to apply excess or inadequate~~  
11 ~~procurement in one year to no more than the following three years.~~

12 ~~(D) Standard terms and conditions to be used by all electrical~~  
13 ~~corporations in contracting for eligible renewable energy~~  
14 ~~resources, including performance requirements for renewable~~  
15 ~~generators.~~

16 ~~(3) Consistent with the goal of procuring the least cost and~~  
17 ~~best fit eligible renewable energy resources, the renewable energy~~  
18 ~~procurement plan submitted by an electrical corporation shall~~  
19 ~~include, but is not limited to, all of the following:~~

20 ~~(A) An assessment of annual or multiyear portfolio supplies~~  
21 ~~and demand to determine the optimal mix of renewable generation~~  
22 ~~resources with deliverability characteristics that may include~~  
23 ~~peaking, dispatchable, baseload, firm, and as available capacity.~~

24 ~~(B) Provisions for employing available compliance flexibility~~  
25 ~~mechanisms established by the commission.~~

26 ~~(C) A bid solicitation setting forth the need for renewable~~  
27 ~~generation of each deliverability characteristic, required on-line~~  
28 ~~dates, locational preferences if any, and market price for each~~  
29 ~~renewable energy product. Payments may be structured to include~~  
30 ~~both capacity and energy components.~~

31 ~~(4) In soliciting and procuring eligible renewable energy~~  
32 ~~resources, each electrical corporation shall offer contracts of no~~  
33 ~~less than 10 years in duration, unless the commission approves of~~  
34 ~~a contract of shorter duration.~~

35 ~~(5) In soliciting and procuring eligible renewable energy~~  
36 ~~resources, each electrical corporation may give preference to~~  
37 ~~projects that provide tangible demonstrable benefits to~~  
38 ~~communities with a plurality of minority or low income~~  
39 ~~populations.~~

~~(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement by the electrical corporation. The commission shall ensure that, if the electrical corporation submits a procurement plan within the required time period, the electrical corporation will be able to procure sufficient renewable resources to comply with the terms and goals of the California Renewables Portfolio Standard Program.~~

~~(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.~~

~~(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.~~

~~(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.~~

~~(f) The commission shall allow an electrical corporation to recover, in rates, procurement and administrative costs reasonably incurred pursuant to the California Renewables Portfolio Standard Program, if the electrical corporation incurred the costs consistent with a renewable energy procurement plan approved by the commission.~~

~~SEC. 2. Section 383.5 of the Public Utilities Code is amended to read:~~

~~383.5.—(a) It is the intent of the Legislature in establishing the Renewable Energy Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent~~

1 of the total electricity generated for consumption in California per  
2 year by 2006.

3 (b) ~~As used in this section, the following terms have the~~  
4 ~~following meaning:~~

5 (1) ~~“In-state renewable electricity generation technology”~~  
6 ~~means a facility using biomass, solar thermal, photovoltaic, wind,~~  
7 ~~geothermal, fuel cells using renewable fuels, small hydroelectric~~  
8 ~~generation facility of 30 megawatts or less, digester gas, and~~  
9 ~~landfill gas generation technologies, as described in the report,~~  
10 ~~defined in paragraph (2), including any additions or enhancements~~  
11 ~~thereto, that are located in this state or located near the border of~~  
12 ~~this state and with the first point of connection to the Western~~  
13 ~~Systems Coordinating Council (WSCC) transmission system~~  
14 ~~located within this state. “In-state renewable electricity~~  
15 ~~generation facility” also includes a facility using ocean thermal,~~  
16 ~~tidal current, and wave energy generation technologies, located~~  
17 ~~within the state’s territorial boundaries.~~

18 (2) ~~“Report” means the report entitled “Investing in~~  
19 ~~Renewable Electricity Generation in California” (June 2001,~~  
20 ~~Publication Number P500-00-022) submitted to the Governor and~~  
21 ~~the Legislature by the State Energy Resources Conservation and~~  
22 ~~Development Commission (Energy Commission).~~

23 (c) (1) ~~Twenty percent of the funds collected pursuant to~~  
24 ~~paragraph (3) of subdivision (c) of Section 381 shall be used for~~  
25 ~~programs that are designed to improve the competitiveness of~~  
26 ~~existing in-state renewable electricity generation technology~~  
27 ~~facilities, and to secure for the state the environmental, economic,~~  
28 ~~and reliability benefits that continued operation of those facilities~~  
29 ~~will provide. Eligibility for incentives under this subdivision shall~~  
30 ~~be limited to those technologies found eligible for funds by the~~  
31 ~~Energy Commission pursuant to paragraphs (5), (6), and (8) of~~  
32 ~~subdivision (c) of Section 399.6.~~

33 (2) ~~Any funds used to support in-state renewable electricity~~  
34 ~~generation facilities pursuant to this subdivision shall be expended~~  
35 ~~in accordance with the report, subject to all of the following~~  
36 ~~requirements:~~

37 (A) ~~Of the funding for existing renewable electricity~~  
38 ~~generation facilities available pursuant to this subdivision, 75~~  
39 ~~percent shall be used to fund first tier technologies, including~~

1 biomass and solar electric technologies and 25 percent shall be  
2 used to fund second tier wind technologies.

3 (B) The Energy Commission shall reexamine the tier structure  
4 as proposed in the report and adjust the structure to reflect market  
5 and contractual conditions. The Energy Commission shall also  
6 consider inflation when adjusting the structure.

7 (C) The Energy Commission shall establish a cents per  
8 kilowatthour production incentive, not to exceed the payment caps  
9 per kilowatthour established in the report, as those payment caps  
10 are revised in guidelines adopted by the commission, representing  
11 the difference between target prices and the market clearing price  
12 for electricity, if sufficient funds are available. If there are  
13 insufficient funds in any payment period to pay either the  
14 difference between the target and market price or the payment  
15 caps, production incentives shall be based on the amount  
16 determined by dividing available funds by eligible generation. The  
17 market price for electricity shall be determined by the Energy  
18 Commission based on the energy prices paid to nonutility power  
19 generators as authorized by the Energy Commission, or on  
20 otherwise available measures of market price. For the first tier  
21 technologies, the Energy Commission shall establish a  
22 time-differentiated incentive structure that encourages plants to  
23 run the maximum feasible amount of time and that provides a  
24 higher incentive when the plants are receiving the lowest price.

25 (D) Facilities that are eligible to receive funding pursuant to  
26 this subdivision shall be registered in accordance with criteria  
27 developed by the Energy Commission and those facilities may not  
28 receive payments for any electricity produced that has any of the  
29 following characteristics:

30 (i) Is sold at monthly average rates equal to or greater than the  
31 applicable target price, as determined by the Energy Commission.

32 (ii) Is that portion of electricity generation attributable to the  
33 use of qualified agricultural biomass fuel, for a facility that is  
34 receiving fuel-based incentives through the Agricultural  
35 Biomass-to-Energy Incentive Grant Program established pursuant  
36 to Part 3 (commencing with Section 1101) of Division 1 of the  
37 Food and Agricultural Code. Notwithstanding subdivision (f) of  
38 Section 1104 of the Food and Agricultural Code, facilities that  
39 receive funding from the Agricultural Biomass-to-Energy

~~Incentive Grant Program are eligible to receive funding pursuant to this subdivision.~~

~~(iii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.~~

~~(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (3) of subdivision (e) of Section 381, shall be used towards achieving the goals, to the extent possible, of the California Renewables Portfolio Standard Program established pursuant to Article 16 (commencing with Section 399.11).~~

~~(2) Any funds used for new in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:~~

~~(A) All funds shall be awarded in the form of supplemental energy payments to projects selected by retail sellers to fulfill their obligations under the California Renewables Portfolio Standard Program pursuant to Article 16 (commencing with Section 399.11). The Energy Commission shall manage the funds in a manner that ensures the availability of supplemental energy payments to support the renewables portfolio standard established by Sections 399.14 and 399.15. Funds not required for this purpose may be allocated by the Energy Commission pursuant to the report.~~

~~(B) After reviewing the results of solicitations conducted by electrical corporations pursuant to Section 333, the Energy Commission shall do all of the following:~~

~~(i) Confirm that the facility has been selected by an electrical corporation, pursuant to a commission approved process, to supply electricity under a long-term contract.~~

~~(ii) Award supplemental energy payments to the facility for any above-market prices approved by the commission pursuant to Sections 333 and 399.15, subject to caps established by the Energy Commission. These caps shall be designed to provide for a viable renewable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive applicability of the caps to accommodate a facility if it is demonstrated, to the Energy Commission's satisfaction, that operation of the facility would provide substantial economic and~~

1 environmental benefits to end use customers subject to the funding  
2 requirements of Section 381.

3 ~~(iii) Supplemental energy payments shall be awarded for the~~  
4 ~~lesser of 10 years or the duration of the contract with the electrical~~  
5 ~~corporation, commencing on the date of operation. The Energy~~  
6 ~~Commission may reduce or terminate the awards for projects that~~  
7 ~~fail either to commence and maintain operations consistent with~~  
8 ~~the contractual obligations to an electrical corporation or that fail~~  
9 ~~to meet eligibility requirements, pursuant to subparagraph (G).~~

10 ~~(C) After reviewing contracts between facilities and retail~~  
11 ~~suppliers other than electrical corporations, the Energy~~  
12 ~~Commission shall do the following:~~

13 ~~(1) Confirm that the facility has been selected by a retail seller~~  
14 ~~other than an electrical corporation to supply electricity under a~~  
15 ~~long-term contract.~~

16 ~~(2) Award supplemental energy payments to the facility based~~  
17 ~~on any above-market costs calculated by the Energy Commission~~  
18 ~~pursuant to the criteria established in Section 399.15.~~  
19 ~~Supplemental payments shall only be awarded if there are~~  
20 ~~reasonable above-market costs that have been reviewed and~~  
21 ~~approved by the Energy Commission. The Energy Commission~~  
22 ~~may reduce or terminate the awards for projects that fail to~~  
23 ~~commence operations consistent with contractual obligations or~~  
24 ~~program guidelines.~~

25 ~~(D) The Energy Commission may determine as part of a~~  
26 ~~solicitation, that a facility that does not meet the definition of~~  
27 ~~“in-state renewable electricity generation facility” solely because~~  
28 ~~it is located outside the state, is eligible for funding under this~~  
29 ~~subdivision if it meets both of the following requirements:~~

30 ~~(i) It is located so that it is or will be connected to the Western~~  
31 ~~Systems Coordinating Council (WSCC) transmission system.~~

32 ~~(ii) It is developed with guaranteed contracts to sell its~~  
33 ~~generation to end use customers subject to the funding~~  
34 ~~requirements of Section 381, or to marketers that provide this~~  
35 ~~guarantee for resale of the generation, for a period of time at least~~  
36 ~~equal to the amount of time it receives incentive payments under~~  
37 ~~this subdivision.~~

38 ~~(E) Facilities that are eligible to receive funding pursuant to~~  
39 ~~this subdivision shall be registered in accordance with criteria~~  
40 ~~developed by the Energy Commission and those facilities may not~~

1 receive payments for any electricity produced that has any of the  
2 following characteristics:

3 (i) ~~Is sold under an existing long-term contract with an existing~~  
4 ~~in-state electrical corporation if the contract includes fixed energy~~  
5 ~~or capacity payments, except for that electricity that satisfies~~  
6 ~~subparagraph (C) of paragraph (1) of subdivision (c) of Section~~  
7 ~~399.6.~~

8 (ii) ~~Is used onsite or is sold to customers in a manner that~~  
9 ~~excludes competitive transition charge payments, or is otherwise~~  
10 ~~excluded from competitive transition charge payments.~~

11 (iii) ~~Is produced by a facility that is owned by an electrical~~  
12 ~~corporation or a local publicly owned electric utility as defined in~~  
13 ~~subdivision (d) of Section 9604.~~

14 (iv) ~~Is a hydroelectric generation project that will require a new~~  
15 ~~or increased diversion, as defined in Section 5100 of the Water~~  
16 ~~Code.~~

17 (F) ~~Eligibility to compete for funds or to receive funds shall be~~  
18 ~~contingent upon having to sell the output of the renewable~~  
19 ~~electricity generation facility to customers subject to the funding~~  
20 ~~requirements of Section 381.~~

21 (G) ~~Facilities generating electricity from biomass energy shall~~  
22 ~~be considered an in-state renewable electricity generation facility~~  
23 ~~to the extent that they certify to the Energy Commission that fuel~~  
24 ~~utilization is limited to the following:~~

25 (i) ~~Agricultural crops and agricultural wastes and residues.~~

26 (ii) ~~Solid waste materials such as waste pallets, crates,~~  
27 ~~dunnage, manufacturing and construction wood wastes, landscape~~  
28 ~~or right-of-way tree trimmings, mill residues that are directly the~~  
29 ~~result of the milling of lumber, and rangeland maintenance~~  
30 ~~residues.~~

31 (iii) ~~Wood and wood wastes that meet all of the following~~  
32 ~~requirements:~~

33 (I) ~~Have been harvested pursuant to an approved timber harvest~~  
34 ~~plan prepared in accordance with the Z'berg-Nejedly Forest~~  
35 ~~Practice Act of 1973 (Chapter 8 (commencing with Section 4511),~~  
36 ~~Part 2, Divivisio 4, Public Resources Code).~~

37 (II) ~~Have been harvested for the purpose of forest fire fuel~~  
38 ~~reduction or forest stand improvement.~~

39 (III) ~~Do not transport or cause the transportation of species~~  
40 ~~known to harbor insect or disease nests outside zones of infestation~~

1 or current quarantine zones, as identified by the Department of  
2 Food and Agriculture or the Department of Forestry and Fire  
3 Protection, unless approved by the Department of Food and  
4 Agriculture and the Department of Forestry and Fire Protection.

5 (3) Production incentives awarded under this subdivision prior  
6 to January 1, 2002, shall commence on the date that a project  
7 begins electricity production, provided that the project was  
8 operational prior to January 1, 2002, unless the Energy  
9 Commission finds that the project will not be operational prior to  
10 January 1, 2002, due to circumstances beyond the control of the  
11 developer. Upon making a finding that the project will not be  
12 operational due to circumstances beyond the control of the  
13 developer, the Energy Commission shall pay production  
14 incentives over a five-year period, commencing on the date of  
15 operation, provided that the date that a project begins electricity  
16 production may not extend beyond January 1, 2007.

17 (4) Repowered existing facilities shall be eligible for funding  
18 under this subdivision if the capital investment to repower the  
19 existing facility equals at least 80 percent of the value of the  
20 repowered facility.

21 (5) Facilities engaging in the combustion of municipal solid  
22 waste or tires are not eligible for funding under this subdivision.

23 (e) (1) Seventeen and one-half percent of the funds collected  
24 pursuant to paragraph (3) of subdivision (c) of Section 381 shall  
25 be used for a multiyear, consumer-based program to foster the  
26 development of emerging renewable technologies in distributed  
27 generation applications.

28 (2) Any funds used for emerging technologies pursuant to this  
29 subdivision shall be expended in accordance with the report,  
30 subject to all of the following requirements:

31 (A) Funding for emerging technologies shall be provided  
32 through a competitive, market-based process that shall be in place  
33 for a period of not less than five years, and shall be structured so  
34 as to allow eligible emerging technology manufacturers and  
35 suppliers to anticipate and plan for increased sale and installation  
36 volumes over the life of the program.

37 (B) The program shall provide monetary rebates, buydowns, or  
38 equivalent incentives, subject to subparagraph (C), to purchasers,  
39 lessees, lessors, or sellers of eligible electricity-generating  
40 systems. Incentives shall benefit the end-use consumer of

1 renewable generation by directly and exclusively reducing the  
2 purchase or lease cost of the eligible system, or the cost of  
3 electricity produced by the eligible system. Incentives shall be  
4 issued on the basis of the rated electrical generating capacity of the  
5 system measured in watts, or the amount of electricity production  
6 of the system, measured in kilowatthours determined by the  
7 Energy Commission.

8 (C) Eligible distributed emerging technologies are  
9 photovoltaic, solar thermal electric, fuel cell technologies that  
10 utilize renewable fuels, and wind turbines of not more than 50  
11 kilowatts rated electrical generating capacity per customer site,  
12 and other distributed renewable emerging technologies that meet  
13 the emerging technology eligibility criteria established by the  
14 Energy Commission. Eligible electricity generating systems are  
15 intended primarily to offset part or all of the consumer's own  
16 electricity demand, and shall not be owned by local publicly  
17 owned electric utilities, nor be located at a customer site that is not  
18 receiving distribution service from an electrical corporation that  
19 is subject to Section 381 and contributing funds to support  
20 programs under this section. All eligible electricity generating  
21 system components shall be new and unused, shall not have been  
22 previously placed in service in any other location or for any other  
23 application, and shall have a warranty of not less than five years  
24 to protect against defects and undue degradation of electrical  
25 generation output. Systems and their fuel resource shall be located  
26 on the same premises of the end-use consumer where the  
27 consumer's own electricity demand is located, and all eligible  
28 electricity generating systems shall be connected to the utility grid  
29 in California. The Energy Commission may require eligible  
30 electricity generating systems to have meters in place to monitor  
31 and measure a system's performance and generation. Only  
32 systems that will be operated in compliance with applicable law  
33 and the rules of the commission shall be eligible for funding.

34 (D) The Energy Commission shall limit the amount of funds  
35 available for any system or project of multiple systems and reduce  
36 the level of funding for any system or project of multiple systems  
37 that has received, or may be eligible to receive, any government  
38 or utility funds, incentives, or credit.

39 (E) In awarding funding, the Energy Commission may provide  
40 preference to systems that provide tangible demonstrable benefits

1 to communities with a plurality of minority or low-income  
2 populations.

3 (F) In awarding funding, the Energy Commission shall develop  
4 and implement eligibility criteria and a system that provides  
5 preference to systems based upon system performance, taking into  
6 account factors, including, but not limited to, shading, insulation  
7 levels, and installation orientation.

8 (f) (1) Ten percent of the funds collected pursuant to paragraph  
9 (3) of subdivision (c) of Section 381 shall be used to provide  
10 customer credits to customers that entered into a direct transaction  
11 on or before September 20, 2001, for purchases of electricity  
12 produced by registered in-state renewable electricity generating  
13 facilities.

14 (2) Any funds used for customer credits pursuant to this  
15 subdivision shall be expended, as provided in the report, subject  
16 to the following requirements:

17 (A) Customer credits shall be awarded to California retail  
18 customers located in the service territory of an electrical  
19 corporation that is subject to Section 381 that is contributing funds  
20 to support programs under this section, and that is purchasing  
21 qualifying electricity from renewable electricity generating  
22 facilities through transactions traceable to specific generation  
23 sources by any auditable contract trail or equivalent that provides  
24 commercial verification that the electricity from the claimed  
25 renewable electricity generating facilities has been sold once and  
26 only once to a retail customer.

27 (B) Credits awarded pursuant to this paragraph may be paid  
28 directly to electric service providers, energy marketers,  
29 aggregators, or generators if those persons or entities account for  
30 the credits on the recipient customer's bills. Credits may not  
31 exceed one and one-half cents (\$0.015) per kilowatthour. Credits  
32 awarded to members of the combined class of customers, other  
33 than residential and small commercial customers, may not exceed  
34 one thousand dollars (\$1,000) per customer per calendar year. In  
35 no event may more than 20 percent of the total customer incentive  
36 funds be awarded to members of the combined class of customers  
37 other than residential and small commercial customers.

38 (C) Credits awarded pursuant to this paragraph are subject to  
39 the following additional limitations:

1 ~~(i) No credits shall be awarded for any customer signing~~  
2 ~~contracts with an electric service provider after September 20,~~  
3 ~~2001.~~

4 ~~(ii) Credits may not be awarded for procurement from projects~~  
5 ~~receiving supplemental energy payments under subdivision (c) of~~  
6 ~~this section.~~

7 ~~(D) The Energy Commission shall develop criteria and~~  
8 ~~procedures for the identification of energy purchasers and~~  
9 ~~providers that are eligible to receive funds pursuant to this~~  
10 ~~paragraph through a process consistent with this paragraph. These~~  
11 ~~criteria and procedures shall apply only to funding eligibility and~~  
12 ~~may not extend to other renewable marketing claims.~~

13 ~~(E) The commission shall notify the Energy Commission in~~  
14 ~~writing within 10 days of revoking or suspending the registration~~  
15 ~~of any electric service provider pursuant to paragraph (4) of~~  
16 ~~subdivision (b) of Section 394.25.~~

17 ~~(F) By March 31, 2003, the Energy Commission shall report to~~  
18 ~~the Governor and the Legislature on how to most effectively utilize~~  
19 ~~the funds for customer credits, including whether, and under what~~  
20 ~~conditions, the program should be continued. The report shall~~  
21 ~~include an examination of trends in markets for renewable energy,~~  
22 ~~including the trading of nonenergy attributes, and the role of~~  
23 ~~customer credits in such markets. The report will recommend an~~  
24 ~~appropriate funding allocation for the customer credits and how~~  
25 ~~implementation of the customer credits should be structured, if~~  
26 ~~appropriate.~~

27 ~~(g) One percent of the funds collected pursuant to paragraph (3)~~  
28 ~~of subdivision (c) of Section 381 shall be used in accordance with~~  
29 ~~the report to promote renewable energy and to disseminate~~  
30 ~~information on renewable energy technologies, including~~  
31 ~~emerging renewable technologies, and to help develop a consumer~~  
32 ~~market for renewable energy and for small-scale emerging~~  
33 ~~renewable energy technologies.~~

34 ~~(h) (1) The Energy Commission shall adopt guidelines~~  
35 ~~governing the funding programs authorized under this section, at~~  
36 ~~a publicly noticed meeting offering all interested parties an~~  
37 ~~opportunity to comment. Substantive changes to the guidelines~~  
38 ~~may not be adopted without at least 10 days' written notice to the~~  
39 ~~public. The public notice of meetings required by this paragraph~~  
40 ~~may not be less than 30 days. Notwithstanding any other provision~~

1 of law, any guidelines adopted pursuant to this section shall be  
2 exempt from the requirements of Chapter 3.5 (commencing with  
3 Section 11340) of Division 3 of Title 2 of the Government Code.  
4 The Legislature declares that the changes made to this paragraph  
5 by the act amending this section during the 2002 portion of the  
6 2001–02 Regular Session are declaratory of, and not a change in,  
7 existing law.

8 (2) Funds to further the purposes of this section may be  
9 committed for multiple years.

10 (3) Awards made pursuant to this section are grants, subject to  
11 appeal to the Energy Commission upon a showing that factors  
12 other than those described in the guidelines adopted by the Energy  
13 Commission were applied in making the awards and payments.  
14 Any actions taken by an applicant to apply for, or become or  
15 remain eligible and registered to receive, payments or awards,  
16 including satisfying conditions specified by the Energy  
17 Commission, shall not constitute the rendering of goods, services,  
18 or a direct benefit to the Energy Commission.

19 (i) The Energy Commission shall report to the Legislature on  
20 or before May 31, 2000, and on or before May 31 of every second  
21 year thereafter, regarding the results of the mechanisms funded  
22 pursuant to this section. Reports prepared pursuant to this section  
23 shall include a description of the allocation of funds among  
24 existing, new and emerging technologies; the allocation of funds  
25 among programs, including consumer-side incentives; and the  
26 need for the reallocation of money among those technologies. The  
27 reports shall discuss the progress being made toward achieving the  
28 17 percent target provided in subdivision (a) by each funding  
29 category authorized pursuant to subdivisions (c), (d), (e), (f), and  
30 (g) of this section. The reports shall also address the allocation of  
31 funds from interest on the accounts described in this section, and  
32 money in the accounts described in subdivision (c) of Section 381.  
33 Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this  
34 section, money may be reallocated without further legislative  
35 action among existing, new, and emerging technologies and  
36 consumer-side programs in a manner consistent with the report  
37 and with the latest report provided to the Legislature pursuant to  
38 this subdivision, except that reallocations may not reduce the  
39 allocation established in subdivision (d) nor increase the allocation  
40 established in subdivision (e).

~~(j) The Energy Commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The Energy Commission shall consult with the commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.~~

~~(k) The Energy Commission shall participate in proceedings at the commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.~~

~~(l) The Energy Commission may expend up to 1 percent of the funds collected pursuant to paragraph (3) of subdivision (c) of Section 381 for any of its costs of implementing and administering Article 16 (commencing with Section 399.11).~~

**SEC. 3.—**

**SECTION 1.** Section 387 is added to the Public Utilities Code, to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing ~~the a~~ renewables portfolio standard ~~consistent with Article 16 (commencing with Section 399.11).~~ *that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.*

(b) Each local publicly owned electric utility shall report, on an annual basis, to ~~the State Energy Resources Conservation and Development Commission~~ *its customers*, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.

SEC. 4. ~~Section 390 of the Public Utilities Code is amended to read:~~

~~390. (a) Subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based upon the commission's prescribed "short run avoided cost energy methodology" shall be determined as set forth in subdivisions (b) and (c).~~

~~(b) Until the requirements of subdivision (c) have been satisfied, short run avoided cost energy payments paid to nonutility power generators by an electrical corporation shall be based on a formula that reflects a starting energy price, adjusted monthly to reflect changes in a starting gas index price in relation to an average of current California natural gas border price indices. The starting energy price shall be based on 12-month averages of recent, pre-January 1, 1996, short run avoided energy prices paid by each public utility electrical corporation to nonutility power generators. The starting gas index price shall be established as an average of index gas prices for the same annual periods.~~

~~(c) The short run avoided cost energy payments paid to nonutility power generators by electrical corporations shall be based on the clearing price paid by the independent Power Exchange if (1) the commission has issued an order determining that the independent Power Exchange is functioning properly for the purposes of determining the short run avoided cost energy payments to be made to nonutility power generators, and either (2) the fossil-fired generation units owned, directly or indirectly, by the public utility electrical corporation are authorized to charge market-based rates and the "going forward" costs of those units are being recovered solely through the clearing prices paid by the independent Power Exchange or from contracts with the Independent System Operator, whether those contracts are market-based or based on operating costs for particular utility-owned powerplant units and at particular times when reactive power/voltage support is not yet procurable at market-based rates at locations where it is needed, and are not being recovered directly or indirectly through any other source, or~~

~~(3) the public utility electrical corporation has divested 90 percent of its gas-fired generation facilities that were operated to meet load in 1994 and 1995. However, nonutility power generators subject to this section may, upon appropriate notice to the public utility electrical corporation, exercise a one-time option to elect to thereafter receive energy payments based upon the clearing price from the independent Power Exchange.~~

~~(d) If a nonutility power generator is being paid short-run avoided costs energy payments by an electrical corporation by a firm capacity contract, a forecast as-available capacity contract, or a forecast as-delivered capacity contract on the basis of the clearing price paid by the independent Power Exchange as described in subdivision (c) above, the value of capacity in the clearing price, if any, shall not be paid to the nonutility power generator. The value of capacity in the clearing price, if any, equals the difference between the market clearing customer demand bid at the level of generation dispatched by the independent Power Exchange and the highest supplier bid dispatched.~~

~~(e) Short-run avoided energy cost payments made pursuant to this section are in addition to contractually specified capacity payments. Nothing in this section shall be construed to affect, modify or amend the terms and conditions of existing nonutility power generators' contracts with respect to the sale of energy or capacity or otherwise.~~

~~(f) Nothing in this section shall be construed to limit the level of transition cost recovery provided to utilities under electric industry restructuring policies established by the commission.~~

~~(g) The term "going forward costs" shall include, but not be limited to, all costs associated with fuel transportation and fuel supply, administrative and general, and operation and maintenance; provided that, for purposes of this section, the following shall not be considered "going forward costs": (1) commission-approved capital costs for capital additions to fossil-fueled powerplants, provided that such additions are necessary for the continued operation of the powerplants utilized to meet load and such additions are not undertaken primarily to expand, repower or enhance the efficiency of plant operations; or, (2) commission-approved operating costs for particular utility-owned powerplant units and at particular times when reactive power/voltage support is not yet procurable at~~

1 ~~market-based rates in locations where it is needed, provided that~~  
2 ~~the recovery shall end on December 31, 2001.~~

3 ~~(h) Any nonutility power generator using renewable fuels that~~  
4 ~~has entered into a contract with an electrical corporation prior to~~  
5 ~~December 31, 2001, specifying fixed energy prices for five years~~  
6 ~~of output may elect an additional five years of fixed energy~~  
7 ~~payments, upon expiration of the initial five-year term, at a price~~  
8 ~~to be determined by the commission.~~

9 ~~SEC. 5.—~~

10 *SEC. 2. Section 390.1 is added to the Public Utilities Code, to*  
11 *read:*

12 *Any nonutility power generator using renewable fuels that has*  
13 *entered into a contract with an electrical corporation prior to*  
14 *December 31, 2001, specifying fixed energy prices for five years*  
15 *of output may negotiate a contract for an additional five years of*  
16 *fixed energy payments upon expiration of the initial five-year term,*  
17 *at a price to be determined by the commission.*

18 *SEC. 3. Article 16 (commencing with Section 399.11) is*  
19 *added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities*  
20 *Code, to read:*

21  
22 *Article 16. California Renewables Portfolio Standard Program*

23  
24 *399.11. The Legislature finds and declares all of the*  
25 *following:*

26 *(a) In order to attain a target of 20 percent renewable energy for*  
27 *the State of California and for the purposes of increasing the*  
28 *diversity, reliability, public health and environmental benefits of*  
29 *the energy mix, it is the intent of the Legislature that the California*  
30 *Public Utilities Commission and the State Energy Resources*  
31 *Conservation and Development Commission implement the*  
32 *California Renewables Portfolio Standard Program described in*  
33 *this article.*

34 *(b) Increasing California's reliance on renewable energy*  
35 *resources will may promote stable electricity prices, protect public*  
36 *health, improve environmental quality, stimulate sustainable*  
37 *economic development, create new employment opportunities,*  
38 *and reduce reliance on imported fuels.*

39 *(c) The development of renewable energy resources will may*  
40 *ameliorate air quality problems throughout the state and improve*

1 public health by reducing the burning of fossil fuels and the  
2 associated environmental impacts.

3 ~~(d) Uncontrolled natural gas prices have the potential to cause~~  
4 ~~serious economic damage to the State of California and measures~~  
5 ~~must be taken to avoid overreliance on any one fuel for future~~  
6 ~~electric generation needs.~~

7 ~~(e) The enactment of a renewables portfolio standard will~~  
8 ~~benefit low-income communities and communities of color that~~  
9 ~~experience disproportionate impacts from air pollution caused by~~  
10 ~~electric generating facilities that burn fossil fuels. The Legislature~~  
11 ~~intends that these communities shall receive economic and~~  
12 ~~environmental benefits associated with the siting of renewable~~  
13 ~~generation.~~

14 ~~(f)~~

15 (d) The California Renewables Portfolio Standard is intended  
16 to complement the Renewable Energy Program administered by  
17 the State Energy Resources Conservation and Development  
18 Commission and established pursuant to Sections 383.5 and 445.  
19 399.12. For purposes of this article, the following terms have  
20 the following meanings:

21 (a) (1) “Eligible renewable energy resource” means an  
22 electric generating facility that is one of the following:

23 ~~(1) The facility is certified by the State Energy Resources~~  
24 ~~Conservation and Development Commission as eligible to receive~~  
25 ~~funding from programs authorized under Section 383.5.~~

26 ~~(2) The facility is a geothermal, digester gas or landfill gas~~  
27 ~~generation technology that, as of December 30, 2001, sold its~~  
28 ~~output to a California electrical corporation under a long-term~~  
29 ~~contract entered into pursuant to the federal Public Utility~~  
30 ~~Regulatory Policies Act of 1978 (Public Law 95-617).~~

31 ~~(3) A geothermal generation facility that was divested by a~~  
32 ~~California electrical corporation or local publicly owned electric~~  
33 ~~utility at any time prior to January 1, 2002, and whose output is~~  
34 ~~purchased by any California electrical corporation. Output from~~  
35 ~~these facilities shall be eligible only for the purpose of adjusting~~  
36 ~~a retail seller’s baseline quantity of eligible renewable energy~~  
37 ~~resources, except for that output that satisfies subparagraph (C) of~~  
38 ~~paragraph (1) of subdivision (c) of Section 399.6. All such~~  
39 ~~facilities owned by the same entity and that use the same~~  
40 ~~steamfield shall be considered a single facility for purposes of~~

~~determining if the output satisfies subparagraph (C) of paragraph (1) of subdivision (e) of Section 399.6.~~

*(1) The facility meets the definition of “in-state renewable electricity generation technology” in Section 383.5.*

*(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller’s baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output is not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.*

*(3) The output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility may not be considered an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.*

*(4) All facilities eligible to receive funding from programs authorized under Section 383.5 are ineligible for consideration for funds during any period that their output is sold with additional compensation received for satisfying the requirements of a Reliability Must-Run contract with the Independent System Operator.*

*(5) A new hydroelectric facility may not be eligible if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.*

*(b) “Retail seller” means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:*

*(1) An electrical corporation, as defined in Section 218.*

(2) A community choice aggregator. *The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.*

~~(3) A local publicly owned electric utility as defined by subdivision (d) of Section 9604. A local publicly owned electric utility as defined by subdivision (d) of Section 9604 shall be subject only to Section 387 for purposes of compliance with the renewables portfolio standard obligation.~~

~~(4)~~  
(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on ~~January 1, 2005~~, the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing on this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

~~(5)~~  
(4) “Retail seller” does not include either any of the following:  
~~(A) Self-generation serving customer load, consistent with~~

(A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) *A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.*

(c) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure ~~in any given year, as established~~ pursuant to Sections 399.13 and 399.15.

~~(d) “Commission” means the Public Utilities Commission.~~

~~(e) “Energy Commission” means the State Energy Resources Conservation and Development Commission.~~

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants ~~that the Energy Commission~~ *it* deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Allocate and award supplemental energy payments pursuant to ~~subdivision (d) of Section 383.5 to eligible renewable energy resources to reduce the cost of compliance with the renewables portfolio standard by electrical corporations and electric service providers.~~

~~(d) The Energy Commission shall consult with the commission prior to establishing rules for compliance by retail sellers other than electrical corporations and rules governing the awarding of~~

~~supplemental energy payments to all retail sellers. The Energy Commission shall adopt guidelines governing the programs authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~399.14. The Energy Commission shall enforce and monitor compliance with the renewables portfolio standard by retail sellers other than electrical corporations and local publicly owned electric utilities. In enforcing compliance, the Energy Commission shall do all of the following:~~

~~(a) Ensure that electric service providers, as defined in Section 218.3, procure a minimum percentage of renewable energy resources for every customer served, located in the service territory of an electrical corporation. In any given year, the minimum percentage shall be equivalent to the difference between the annual portfolio standard for the electrical corporation serving the customer's geographic region and the percentage represented by the share of eligible renewable energy resources supported by the customer through nonbypassable charges assessed pursuant to paragraph (2) of subdivision (a) of Section 367.~~

~~(b) Ensure that retail sellers other than electric service providers and electrical corporations procure a minimum percentage of renewable energy resources for every customer served. The Energy Commission shall determine an initial baseline and annual obligation for these retail sellers in a manner consistent with the initial baselines and annual obligations established for electrical corporations in Section 399.15.~~

~~(c) Establish flexible rules for compliance by retail sellers other than electrical corporations including, but not limited to, the banking of excess compliance by permitting retail sellers to apply overcompliance in one year to no more than the following three years. The Energy Commission may allow retail sellers other than electrical corporations to receive credit for any early procurement~~

1 of eligible renewable energy resources prior to the first date of  
2 compliance required under the renewables portfolio standard.

3 ~~(d) Award supplemental energy payments pursuant to~~  
4 ~~subdivision (d) of Section 383.5 to eligible renewable energy~~  
5 ~~resources to reduce the cost of compliance by retail sellers other~~  
6 ~~than electrical corporations and local publicly owned electric~~  
7 ~~utilities. The Energy Commission shall allocate sufficient funds to~~  
8 ~~ensure the availability of supplemental energy payments for~~  
9 ~~eligible renewable energy resources contracting with electric~~  
10 ~~service providers and community aggregators.~~

11 ~~(e) If supplemental energy payments from the Energy~~  
12 ~~Commission are insufficient to cover above-market renewable~~  
13 ~~procurement costs, the Energy Commission shall allow retail~~  
14 ~~sellers other than electrical corporations to limit their annual~~  
15 ~~procurement obligations to the quantity of eligible renewable~~  
16 ~~energy resources that can be procured with available supplemental~~  
17 ~~energy payments. Assess and collect penalties on any retail seller~~  
18 ~~that is not an electrical corporation and fails to comply with this~~  
19 ~~article. Penalties shall be set at a level sufficient to ensure~~  
20 ~~compliance, as determined by the Energy Commission. energy~~  
21 ~~resources to cover above-market costs of renewable energy.~~

22 *399.14. (a) The commission shall direct each electrical*  
23 *corporation to prepare renewable energy procurement plans as*  
24 *described in paragraph (3) to satisfy its obligations under the*  
25 *Renewables Portfolio Standard. To the extent feasible, this*  
26 *procurement plan shall be proposed, reviewed, and adopted by the*  
27 *commission as part of, and pursuant to, a general procurement*  
28 *plan process. The commission shall require each electrical*  
29 *corporation to review and update its renewable energy*  
30 *procurement plan as it determines to be necessary.*

31 *(1) The commission shall not require an electrical corporation*  
32 *to conduct procurement to fulfill the Renewables Portfolio*  
33 *Standard until it is deemed creditworthy by the commission upon*  
34 *it having attained an investment grade rating as determined by at*  
35 *least two major rating agencies. Within 90 days of being deemed*  
36 *creditworthy, an electrical corporation shall conduct solicitations*  
37 *to implement a renewable energy procurement plan. The*  
38 *creditworthiness determination required by this paragraph shall*  
39 *apply only to the requirements established pursuant to this article.*

*The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.*

*(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:*

*(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.*

*(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.*

*(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.*

*(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.*

*(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:*

1 (A) An assessment of annual or multiyear portfolio supplies  
2 and demand to determine the optimal mix of renewable generation  
3 resources with deliverability characteristics that may include  
4 peaking, dispatchable, baseload, firm, and as-available capacity.

5 (B) Provisions for employing available compliance flexibility  
6 mechanisms established by the commission.

7 (C) A bid solicitation setting forth the need for renewable  
8 generation of each deliverability characteristic, required online  
9 dates, and locational preferences, if any.

10 (4) In soliciting and procuring eligible renewable energy  
11 resources, each electrical corporation shall offer contracts of no  
12 less than 10 years in duration, unless the commission approves of  
13 a contract of shorter duration.

14 (5) In soliciting and procuring eligible renewable energy  
15 resources, each electrical corporation may give preference to  
16 projects that provide tangible demonstrable benefits to  
17 communities with a plurality of minority or low-income  
18 populations.

19 (b) The commission shall review and accept, modify, or reject  
20 each electrical corporation's renewable procurement plan 90 days  
21 prior to the commencement of renewable procurement pursuant to  
22 this article by the electrical corporation.

23 (c) The commission shall review the results of a renewable  
24 energy resources solicitation submitted for approval by an  
25 electrical corporation and accept or reject proposed contracts  
26 with eligible renewable energy resources based on consistency  
27 with the approved renewable procurement plan. If the commission  
28 determines that the bid prices are elevated due to a lack of effective  
29 competition amongst the bidders, the commission shall direct the  
30 electrical corporation to renegotiate such contracts or conduct a  
31 new solicitation.

32 (d) If an electrical corporation fails to comply with a  
33 commission order adopting a renewable procurement plan, the  
34 commission shall exercise its authority pursuant to Section 2113  
35 to require compliance.

36 (e) Upon application by an electrical corporation, the  
37 commission may authorize another entity to enter into contracts on  
38 behalf of customers of the electrical corporation for deliveries of  
39 eligible renewable energy resources to satisfy the annual portfolio  
40 standard obligations, subject to similar terms and conditions

1 *applicable to an electrical corporation. The commission shall*  
 2 *allow the procurement entity to recover reasonable costs through*  
 3 *retail rates subject to review and approval.*

4 *(f) Procurement and administrative costs associated with*  
 5 *long-term contracts entered into by an electrical corporation for*  
 6 *eligible renewable resources, at or below the market price*  
 7 *determined by the commission pursuant to subdivision (c) of*  
 8 *Section 399.15, shall be deemed reasonable per se, and shall be*  
 9 *recoverable in rates.*

10 *(g) For purposes of this article, “procure” means that a utility*  
 11 *may acquire the renewable output of electric generation facilities*  
 12 *that it owns or for which it has contracted. Nothing in this article*  
 13 *is intended to imply that the purchase of electricity from third*  
 14 *parties in a wholesale transaction is the preferred method of*  
 15 *fulfilling a retail seller’s obligation to comply with this article.*

16 *(h) Construction, alteration, demolition, installation, and*  
 17 *repair work, on an eligible renewable energy resource, that*  
 18 *receives production incentives or supplemental energy payments*  
 19 *pursuant to Section 383.5, including, but not limited to, work*  
 20 *performed to qualify, receive, or maintain production incentives or*  
 21 *supplemental energy payments is “public works” for the purposes*  
 22 *of Chapter 1 (commencing with Section 1720) of Part 7 of Division*  
 23 *2 of the Labor Code.*

24 399.15. (a) In order to fulfill unmet long-term resource  
 25 needs, the commission shall establish a renewables portfolio  
 26 standard requiring all electrical corporations to procure a  
 27 minimum quantity of output from eligible renewable energy  
 28 resources as a specified percentage of total kilowatthours sold to  
 29 their retail end-use customers each calendar year, *if sufficient*  
 30 *funds are made available pursuant to paragraph (2), and Sections*  
 31 *399.6 and 383.5 to cover the above-market costs of eligible*  
 32 *renewables, and subject to all of the following:*

33 (1) An electric corporation shall not be required to ~~make~~  
 34 ~~payments to enter into long-term contracts with eligible~~  
 35 ~~renewable energy resources for contracts approved by the~~  
 36 ~~commission pursuant to subdivision (c) of Section 333~~ that exceed  
 37 the market prices established pursuant to subdivision (c) of this  
 38 section.

39 (2) The Energy Commission shall provide supplemental  
 40 energy payments from funds in the New Renewable Resources

1 Account in the Renewable Resource Trust Fund to eligible  
2 renewable energy resources pursuant to Section 383.5, ~~for costs~~  
3 ~~approved by the commission that exceed market prices, consistent~~  
4 ~~with this article, for above-market costs.~~ Indirect costs associated  
5 with the purchase of eligible renewable energy resources, such as  
6 imbalance energy charges, sale of excess energy, decreased  
7 generation from existing resources, or transmission upgrades shall  
8 not be eligible for supplemental energy payments, *but shall be*  
9 *recoverable by an electrical corporation in rates, as authorized by*  
10 *the commission.*

11 (3) For purposes of setting annual ~~purchase~~ *procurement*  
12 targets, the commission shall establish an initial baseline for each  
13 electrical corporation based on the actual percentage of retail sales  
14 procured from eligible renewable energy resources in 2001, and,  
15 to the extent applicable, adjusted going forward pursuant to  
16 ~~paragraph (3) of subdivision (a) of Section 399.12.~~

17 (b) The commission shall implement annual ~~purchase~~  
18 *procurement* targets for each electrical corporation as follows:

19 (1) Beginning on January 1, 2003, each electrical corporation  
20 shall, *pursuant to subdivision (a)*, increase its total procurement  
21 of eligible renewable energy resources by at least an additional 1  
22 percent of retail sales per year so that ~~at least~~ 20 percent of its retail  
23 sales are procured from eligible renewable energy resources no  
24 later than December 31, ~~2015~~ 2017. An electrical corporation with  
25 ~~at least~~ 20 percent of retail sales procured from eligible renewable  
26 energy resources in any year shall not be required to increase its  
27 procurement of such resources in the following year.

28 (2) Only for purposes of establishing these targets, the  
29 commission shall include all power sold to retail customers by the  
30 Department of Water Resources pursuant to Section 80100 of the  
31 Water Code in the calculation of retail sales by an electrical  
32 corporation.

33 (3) In the event that an electrical corporation fails to procure  
34 sufficient eligible renewable energy resources in a given year to  
35 meet any annual target established pursuant to this subdivision, the  
36 electrical corporation shall procure additional eligible renewable  
37 energy resources in subsequent years to compensate for the  
38 shortfall *if sufficient funds are made available pursuant to*  
39 *paragraph (2), and Sections 399.6 and 383.5 to cover the*  
40 *above-market costs of eligible renewables.*

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the ~~total energy payments for approved contracts with~~ *above-market costs of* eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's ~~procurement activities as set forth in Section 333 and this article.~~ *general procurement activities as authorized by the commission.*

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities, ~~and any consumer benefits resulting from reduced demand for natural gas, to the extent these benefits are not already reflected in the long-term costs of electricity.~~ *facilities.*

(3) The value of different products including baseload, peaking and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617). ~~The commission shall continue to implement any federal requirements pursuant to Section 390. 95-617).~~

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

~~SEC. 6.—~~

*SEC. 4.* Section 399.25 is added to the Public Utilities Code, immediately following Section 399.2, to read:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electric corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is

1 necessary to facilitate achievement of the renewable power goals  
2 established in Article 16 (commencing with Section 399.11).

3 (b) With respect to a transmission facility described in  
4 subdivision (a) ~~of this section~~, the commission shall take all  
5 feasible actions to ensure that the transmission rates established by  
6 the Federal Energy Regulatory Commission ~~do not discriminate~~  
7 ~~against a renewable generator and~~ are fully reflected in any retail  
8 rates established by the commission. These actions shall include  
9 but are not limited to:

10 (1) Making findings, where supported by an evidentiary  
11 record, ~~that transmission facilities built to accommodate such~~  
12 ~~generators that those transmission facilities~~ provide benefit to the  
13 transmission network and are necessary to facilitate the  
14 achievement of the renewables portfolio standard established in  
15 Article 16 (commencing with Section 399.11).

16 (2) Directing the utility to which the generator will be  
17 interconnected, where the direction is not preempted by federal  
18 law, to seek the recovery through general transmission rates of the  
19 ~~costs associated with transmission facilities built to accommodate~~  
20 ~~such generators.~~ *costs associated with the transmission facilities.*

21 (3) Asserting the positions described in paragraphs (1) and (2)  
22 to the Federal Energy Regulatory Commission in appropriate  
23 proceedings.

24 (4) Allowing recovery in retail rates of any increase in  
25 transmission costs incurred by an electrical corporation resulting  
26 from the construction of the transmission facilities that are not  
27 approved for recovery in transmission rates by the Federal Energy  
28 Regulatory Commission after the commission determines that the  
29 costs were prudently incurred in accordance with subdivision (a)  
30 of Section 454.

31 ~~SEC. 7.—~~

32 *SEC. 5.* No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution for  
34 certain costs that may be incurred by a local agency or school  
35 district because in that regard this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within  
39 the meaning of Section 6 of Article XIII B of the California  
40 Constitution.

1     However, notwithstanding Section 17610 of the Government  
2     Code, if the Commission on State Mandates determines that this  
3     act contains other costs mandated by the state, reimbursement to  
4     local agencies and school districts for those costs shall be made  
5     pursuant to Part 7 (commencing with Section 17500) of Division  
6     4 of Title 2 of the Government Code. If the statewide cost of the  
7     claim for reimbursement does not exceed one million dollars  
8     (\$1,000,000), reimbursement shall be made from the State  
9     Mandates Claims Fund.

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